

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #6	CCRB Case #: 201903726	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/06/2019 12:00 PM, Sunday, 04/07/2019 2:00 PM	Location of Incident: § 87(2)(b) and the 67th Precinct stationhouse	Precinct: 67	18 Mo. SOL 10/6/2020	EO SOL 5/23/2021	
Date/Time CV Reported Thu, 05/02/2019 9:06 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/02/2019 9:06 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Salvador Diaz	03546	950321	067 PCT
2. An officer			067 PCT
3. POF Jasmine Sweat	20021	962825	067 PCT
4. POM Bekir Oner	18411	955277	067 PCT
5. POM Tomas Janciauskas	06129	956771	067 PCT
6. POM Rene Duran	07546	948923	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Davinder Singh	16997	958073	067 PCT
2. POM Francesco Pennisi	14488	951034	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Bekir Oner	Abuse: On April 6, 2019, Police Officer Bekir Oner entered the basement of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.POM Rene Duran	Abuse: On April 6, 2019, Police Officer Rene Duran entered the basement of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.POM Bekir Oner	Discourtesy: On April 6, 2019, Police Officer Bekir Oner spoke discourteously to § 87(2)(b) in the basement of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D.POM Bekir Oner	Abuse: On April 6, 2019, Police Officer Bekir Oner threatened § 87(2)(b) with the use of force inside the basement of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
E. An officer	Abuse: On April 6, 2019, an officer searched the basement of 399 East 95th Street in Brooklyn.	§ 87(2)(b)
F.POM Bekir Oner	Abuse: On April 6, 2019, Police Officer Bekir Oner detained § 87(2)(b) at § 87(2)(b) in Brooklyn.	§ 87(2)(b)
G.POM Bekir Oner	Abuse: On April 6, 2019, Police Officer Bekir Oner frisked § 87(2)(b) inside the basement of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
H.POM Bekir Oner	Abuse: On April 6, 2019, Police Officer Bekir Oner searched § 87(2)(b) inside the basement of § 87(2)(b) in Brooklyn.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
I.POM Tomas Janciauskas	Abuse: On April 6, 2019, Police Officer Tomas Janciauskas frisked § 87(2)(b) outside of § 87(2)(b) in Brooklyn.	
J.POM Tomas Janciauskas	Abuse: On April 6, 2019, Street Police Officer Tomas Janciauskas searched § 87(2)(b) outside of § 87(2)(b) in Brooklyn.	
K.POM Tomas Janciauskas	Abuse: On April 6, 2019, Police Officer Tomas Janciauskas failed to provide § 87(2)(b) with a business card at § 87(2)(b) in Brooklyn.	
L.SGT Salvador Diaz	Abuse: On April 6, 2019, Sergeant Salvador Diaz threatened to arrest § 87(2)(b) at § 87(2)(b) in Brooklyn.	
M.POF Jasmine Sweat	Abuse: On April 7, 2019, Police Officer Jasmine Sweat threatened to arrest § 87(2)(b) at the 67th Precinct stationhouse.	

Case Summary

On May 2, 2019, § 87(2)(b) filed the following complaint with the CCRB over the phone.

On April 6, 2019, at approximately 12:23 p.m., § 87(2)(b) an ex-girlfriend and non-paying tenant of § 87(2)(b) called 911 and reported a burglary in progress. PO Bekir Oner and PO Rene Duran of the 67th Precinct responded and entered § 87(2)(b)'s basement apartment at § 87(2)(b) in Brooklyn (**Allegations A and B, Abuse of Authority, § 87(2)(g)**). As the officers descended the stairs into § 87(2)(b)'s basement, PO Oner allegedly told § 87(2)(b) "Show me your fucking hands" and pointed his taser at § 87(2)(b) (**Allegations C Abuse of Authority, § 87(2)(g)** and **Allegation D Discourtesy § 87(2)(g)**). Additional officers responded and entered the basement. An unidentified officer opened the door to the boiler room (**Allegation E, Abuse of Authority, § 87(2)(g)**). PO Oner handcuffed and detained § 87(2)(b) (**Allegation F, Abuse of Authority, § 87(2)(g)**). Then PO Oner allegedly frisked and searched § 87(2)(b) (**Allegations G and H, Abuse of Authority, § 87(2)(g)**). Additional officers responded including PO Tomas Janciauskas, who frisked § 87(2)(b) on the staircase outside the basement and allegedly searched him (**Allegations I Abuse of Authority, § 87(2)(g)** and **Allegation J Abuse of Authority § 87(2)(g)**). PO Janciauskas failed to provide § 87(2)(b) with a business card (**Allegation K, Abuse of Authority, § 87(2)(g)**). After Sgt. Diaz spoke to § 87(2)(b) he instructed officers to uncuff § 87(2)(b) and then threatened to arrest him (**Allegation L, Abuse of Authority, § 87(2)(g)**).

On April 7, 2019, § 87(2)(b) went to the 67th Precinct stationhouse, regarding the incident on April 6, 2019. He spoke with PO Jasmine Sweat who allegedly threatened § 87(2)(b) with arrest (**Allegation M, Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) was not arrested or issued a summons during this incident. Ten BWC videos were received for this incident (BR01-10).

Findings and Recommendations

Allegation (A) Abuse of Authority: On April 6, 2019, Police Officer Bekir Oner entered the basement of § 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: On April 6, 2019, Police Officer Rene Duran entered the basement of § 87(2)(b) in Brooklyn.

§ 87(2)(g).

At the 2:38 minute time stamp of the video media player, PO Duran's BWC footage depicts him directly follow PO Oner into the basement, with his hand on PO Oner's shoulder.

It is undisputed that § 87(2)(b) called 911 and reported a burglary in progress. She described the perpetrator as her ex-boyfriend- an approximately 6'0" tall black male. It is undisputed that PO Oner and PO Duran entered § 87(2)(b) in Brooklyn in response to the call.

§ 87(2)(b) stated that on April 6, 2019 at 12:00pm, he entered his house at § 87(2)(b) in Brooklyn. His friend, § 87(2)(b) was in the basement bedroom. From his living room

area in the basement, § 87(2)(b) saw PO Oner descend the steps that led to the basement and entered.

§ 87(2)(b) was ultimately uncooperative with the investigation.

PO Oner testified that when he arrived, officers already on scene. PO Oner and PO Duran, as the senior officers, decided they would be the first officers to enter. They entered a gate and descended a set of stairs into what he believed at the time to be § 87(2)(b) residence. He believed that the perpetrator was still inside because in the 911 call § 87(2)(b) stated the perpetrator re-entered the house. At the bottom of the stairs, PO Oner saw § 87(2)(b) who fit the description. PO Duran's testimony was largely consistent with that of PO Oner.

EVENT § 87(2)(b) notes that a female caller reported that her ex-boyfriend, who she described as a 6'0" tall black and federal agent, was trying to break into the house and that she was hiding in the basement (BR11). The radio message noted that the 911 caller could not meet the officers outside because her ex-boyfriend was trying to kick her bedroom door in while she was inside (BR22). The radio message did not mention whether there were weapons (BR22).

The emergency doctrine states the police must have reasonable ground to believe there is an emergency at hand and an immediate need for their assistance; the search must not primarily be motivated by intent to arrest and seize evidence, and there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched People v. Doll, 21 N.Y.3d 665 (1976) (BR12). NY Penal Law cites burglary in the first and second degree as a violent felony on their class B and Class C violent felony lists (BR23).

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Discourtesy: On April 6, 2019, Police Officer Bekir Oner spoke discourteously to § 87(2)(b) in the basement of § 87(2)(b) in Brooklyn. Neither PO Oner's nor PO Duran's BWC footage depict an officer say, "Show me your fucking hands," at the point it was alleged to have occurred (BR01, BR02, BR04, BR10).

§ 87(2)(b) testified that as PO Oner descended the stairs to the basement, he said, "Show me your fucking hands."

PO Oner confirmed that he repeatedly told § 87(2)(b) to show his hands. He did not remember making the alleged statement.

§ 87(2)(g)

Allegation (D) Abuse of Authority: On April 6, 2019, Police Officer Bekir Oner threatened § 87(2)(b) with the use of force inside the basement of § 87(2)(b) in Brooklyn.

At the 2:37 minute time stamp of the video media player, PO Duran's BWC footage depicts PO Oner enter the basement holding a taser at chest level. The red light of the taser is observed on § 87(2)(b)'s body. (BR02). § 87(2)(b) walked backwards. At 2:42 minutes, § 87(2)(b) is depicted in front of PO Oner with his hands at his sides. The footage did not fully depict if PO Oner's taser is pointed towards § 87(2)(b). The video did not depict if PO Oner holstered his taser. At the 2:47 time stamp of the video media player, PO Oner's BWC footage depicted § 87(2)(b) walk backwards away from PO Oner as he entered. The video captured a glimpse of § 87(2)(b)'s hand, but did not capture whether his hands and arms move around (BR01).

§ 87(2)(b) stated that PO Oner pointed his taser at him for approximately 15 seconds. § 87(2)(b) held his cell phone in his right hand. His left hand was empty. Both hands were visible. PO Oner told § 87(2)(b) to show his hands, which he did.

PO Oner pointed his taser at § 87(2)(b) for his and everyone else's safety. As the call was for a burglary and § 87(2)(b) was a federal agent, he may have had a gun. For both these reasons, PO Oner believed § 87(2)(b) may have been armed. PO Oner told § 87(2)(b) to stop moving and to put his hands by his sides. § 87(2)(b) flailed his arms, stiffened his arms, fidgeted and would not stop moving. § 87(2)(b) was moving before the officers had any physical interaction with him.

PO Duran described § 87(2)(b) as irate because he would not follow directions to keep his hands where the officers could see them. PO Duran did not remember if he saw PO Oner draw his taser or point his taser at § 87(2)(b).

EVENT § 87(2)(b) noted that a female caller reported that her ex-boyfriend, a 6'0" tall black male and federal agent was trying to break into the house and that she was hiding in the basement (BR11). The radio message noted that the 911 caller could not meet the officers outside because her ex-boyfriend was trying to kick her bedroom door in while she was inside. The radio message did not note whether there were weapons. (BR22).

A CEW should only be used against someone who is actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present. It is prohibited to use a CEW in situation that do not require the use of physical force. The Patrol Guide defines active resisting as physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, pushing or verbally signally an intention to avoid or

prevent being taken into or retained in custody, Patrol Guide Section 221-08 (BR14). NY Penal Law cites burglary in the first degree and the second degree as a violent felony on their class B and Class C violent felony lists (BR23).

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: On April 6, 2019, an officer searched the basement of § 87(2)(b) in Brooklyn.

§ 87(2)(b) stated that approximately six additional officers entered within seconds of PO Oner entering. All the officers walked past § 87(2)(b). One of those six officers opened the door to the boiler room and entered. § 87(2)(b) described this officer as an approximately 5'8"-5'9" tall uniformed white male with short dark hair, a petite build and no facial hair.

None of the officers acknowledged entering the boiler room. PO Hussein, PO Oner's partner, and PO Singh are Asian and do not match § 87(2)(b)'s description of the officer who searched the boiler room.

BWC footage captured officers enter § 87(2)(b)'s basement after PO Oner and PO Duran, but it did not capture an officer enter any room in the basement other than § 87(2)(b) bedroom at the point in time § 87(2)(b) alleged an officer did so.

§ 87(2)(g)

Allegation (F) Abuse of Authority: On April 6, 2019, Police Officer Bekir Oner detained § 87(2)(b) in Brooklyn.

At the 3:00 minute time stamp of PO Oner's first BWC camera, PO Oner told § 87(2)(b) that he was going to handcuff § 87(2)(b) for his and their own safety.

§ 87(2)(b) testified that PO Oner handcuffed him. Another unidentified officer informed § 87(2)(b) they were investigating. Sgt. Diaz arrived and walked past § 87(2)(b). When he returned, he instructed officers to remove the handcuffs.

PO Oner testified that he observed § 87(2)(b) an approximately 6'0" tall black male, at the bottom of the stairs. PO Oner told § 87(2)(b) to stop moving multiple times. § 87(2)(b) continued to fidget so an officer handcuffed § 87(2)(b).

PO Duran testified PO Oner handcuffed § 87(2)(b) because § 87(2)(b) did not comply with the order to show his hands, he may have had a gun and the nature of burglary call. § 87(2)(b) was not considered under arrest.

Sgt. Diaz testified that § 87(2)(b) was handcuffed when he arrived. Sgt. Diaz spoke to § 87(2)(b) who informed him that § 87(2)(b) owned the building. § 87(2)(b) said had an intermittent intimate relationship with him and resided in a room in the basement. Based on this information, he instructed officers to uncuff § 87(2)(b).

EVENT § 87(2)(b) notes that a female caller reported that her ex-boyfriend, a 6'0" tall black male and who was a federal agent was trying to break into the house and that she was hiding in the basement (BR11). The radio message noted that the 911 caller could not meet the officers outside because her ex-boyfriend was trying to kick her bedroom door in while she was inside. The radio message did not note whether there were weapons. (BR22).

The detention must be reasonably related in scope to the circumstances justifying the interference in the first place. Second, in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria. Third, while a defendant is detained, the police should diligently pursue a means of investigation that is likely to confirm or dispel their suspicions quickly, People v. Hicks, N.Y. 2d 234 (1986) (BR25).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g).

Allegation (G) Abuse of Authority: On April 6, 2019, Police Officer Bekir Oner frisked § 87(2)(b) inside the basement of § 87(2)(b) in Brooklyn.

Allegation (H) Abuse of Authority: On April 6, 2019, Police Officer Bekir Oner searched § 87(2)(b) inside the basement of § 87(2)(b) in Brooklyn.

§ 87(2)(b) testified after PO Oner handcuffed him, he frisked his waistband area and the outside of his pants' pockets. PO Oner then entered all four of § 87(2)(b)'s pants' pockets. PO Oner did not ask permission to frisk or search § 87(2)(b).

PO Oner testified that § 87(2)(b) was frisked after he was handcuffed but did not remember who frisked him or where on his body § 87(2)(b) was frisked. PO Oner did not remember if

he frisked § 87(2)(b) PO Oner did not remember if he or any officer entered § 87(2)(b) § 87(2)(b) s pants' pockets.

PO Duran did not remember if he saw an officer frisk or search § 87(2)(b) PO Singh, PO Pennisi, PO Janciauskas nor Sgt. Diaz remembered seeing an officer frisk or search § 87(2)(b) § 87(2)(b)

The BWC footage did not depict PO Oner frisk or search § 87(2)(b) There were negative results for stop reports for § 87(2)(b) on April 6, 2019 (BR15).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation (I) Abuse of Authority: On April 6, 2019, Tomas Janciauskas frisked § 87(2)(b) § 87(2)(b) outside of § 87(2)(b) § 87(2)(b) in Brooklyn.

At the 56 second time stamp of the video media player PO Janciauskas frisked § 87(2)(b) s right side of § 87(2)(b) s lower body. It was not clear exactly where he frisked. At 1:02 minutes of the video media player, PO Janciauskas unzipped § 87(2)(b) s jacket and frisked the pockets of the jacket. None of the other BWC videos captured PO Janciauskas frisk.

§ 87(2)(b) stated PO Janciauskas frisked the front of § 87(2)(b) s pants pockets.

PO Janciauskas did not independently remember that he frisked § 87(2)(b) Upon seeing his BWC, PO Janciauskas recalled he frisked § 87(2)(b) for weapons because the job came over as a burglary in progress. PO Janciauskas did not remember if the job mentioned weapons. He observed § 87(2)(b) in handcuffs and that the call provided a description of a male trying to break in so PO Janciauskas frisked § 87(2)(b) s pant pockets, his jacket and his waistband area for the safety of officers. PO Janciauskas unzipped § 87(2)(b) s jacket because it was puffy, and he could not feel anything in his waist band. PO Janciauskas did not frisk § 87(2)(b) § 87(2)(b) for any other reason. PO Janciauskas did not see anything on § 87(2)(b) s person that suggested he may have had a weapon.

PO Oner testified that § 87(2)(b) was frisked after he was handcuffed but did not remember who frisked him. PO Oner did not observe an L-shaped bulge on § 87(2)(b)

PO Duran, PO Singh, PO Pennisi, and Sgt. Diaz did not remember seeing an officer frisk § 87(2)(b) § 87(2)(b) PO Duran, PO Pennisi and Sgt. Diaz did not remember seeing an any bulges on § 87(2)(b) § 87(2)(b)

EVENT § 87(2)(b) noted that a female caller reported that her ex-boyfriend, a 6'0" tall black male and federal agent, was trying to break into the house and that she was hiding in the basement (BR11).

An officer has the authority frisk if the officers reasonably suspect that he is in danger of physical injury by virtue of the detainee being armed People v. De Bour, 40 N.Y. 2d 210 (1976) (BR16). NY Penal Law cites burglary in the first and second degree as a violent felony on their class B and Class C violent felony lists (BR23).

§ 87(2)(g)

Allegation (J) Abuse of Authority: On April 6, 2019, Tomas Janciauskas searched § 87(2)(b) outside of § 87(2)(b) in Brooklyn.

None of the BWC footage capture PO Janciauskas search § 87(2)(b)

§ 87(2)(b) stated that PO Janciauskas entered his pants' pockets.

PO Janciauskas denied searching § 87(2)(b) PO Duran, PO Singh, PO Pennisi, and Sgt. Diaz did not remember seeing an officer search § 87(2)(b) PO Oner did not remember if any officer entered § 87(2)(b)'s pants' pockets.

§ 87(2)(g)

Allegation (K) Abuse of Authority: On April 6, 2019, Police Officer Tomas Janciauskas failed to provide § 87(2)(b) with a business card at § 87(2)(b) in Brooklyn.

It is undisputed that PO Janciauskas frisked § 87(2)(b) and did not provide him with a business card. § 87(2)(b) was not arrested nor issued a summons.

§ 87(2)(b) stated that he did not receive a business card from any officer.

PO Janciauskas did not provide a business card to § 87(2)(b) because he did not know what was going on, he was not the first to arrive on scene and he did not handcuff § 87(2)(b) PO Janciauskas did not believe he needed to provide a business card for this type of incident.

As Sgt. Diaz did not know an officer frisked § 87(2)(b) no allegation was pleaded to him.

Officers are to offer a business card to a person at the conclusion of a stop, frisk and/or search that does not result in an arrest or summons, NYC Administrative Code 14-174 (BR18).

§ 87(2)(g)

Allegation (L) Abuse of Authority: On April 6, 2019, Sergeant Salvador Diaz threatened to arrest § 87(2)(b) at § 87(2)(b) in Brooklyn.

At 1:31 minutes of PO Pennisi's second BWC video, Sgt. Diaz and § 87(2)(b) were outside and § 87(2)(b) was not handcuffed. Sgt. Diaz told § 87(2)(b) if he forcibly removed § 87(2)(b) from the residence, he could be arrested (BR08).

§ 87(2)(b) testified that after Sgt. Diaz ordered officers to uncuff him, they spoke. During their conversation, Sgt. Diaz told § 87(2)(b) that if § 87(2)(b) alleged § 87(2)(b) did something to her, they would return and arrest him. Sgt. Diaz stated they could easily lock him up. Sgt. Diaz then suggested that § 87(2)(b) stay away for his own protection.

Sgt. Diaz testified that after he spoke to § 87(2)(b) and learned § 87(2)(b) owned the building, he explained to § 87(2)(b) that he could not forcibly remove § 87(2)(b) from the room and that if he did so, he could be arrested for illegal eviction. Sgt. Diaz did not discuss any other reason for which § 87(2)(b) could be arrested. § 87(2)(b) was not doing anything for which he could be arrested at the time.

An owner is guilty of harassment of a rent regulated tenant when with intent to cause a rent regulated tenant to vacate a housing accommodation, such owner recklessly causes physical injury to such tenant or with intent to cause physical injury to such tenant, causes injury to the tenant, Penal Law Section 241.05(BR17).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation (M) Abuse of Authority: On April 7, 2019, Police Officer Jasmine Sweat threatened to arrest § 87(2)(b) at the 67th Precinct stationhouse.

§ 87(2)(b) testified that on April 7, 2019, he went to the 67th Precinct stationhouse and spoke to a domestic violence officer whose name he provided as "Sweat." PO Sweat told § 87(2)(b) that if § 87(2)(b) alleged, he did anything, they would come and lock him up. He described PO Sweat as an approximately 5'8" tall black female with a slim build, a light complexion and black hair. There were no officers present for § 87(2)(b)'s conversation with PO Sweat.

PO Sweat confirmed that on April 7, 2019, she was assigned as a domestic violence officer and worked from 7:05 a.m. until 3:40 p.m. But she did not remember this incident.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to one other CCRB complaint and has been named as a victim in 12 allegations (BR19).
 - § 87(2)(b)
- PO Oner has been a member of the NYPD for 6 years § 87(2)(b)
 - § 87(2)(g)
- PO Janciauskas has been a member of the NYPD for five years and this is the first CCRB complaint to which he has been a subject.
- PO Duran has been a member of the NYPD for nine years and this is the first complaint to which he has been a subject.
- Sgt. Diaz has been a member of the NYPD for eight years and has been a subject in three other CCRB complaints and three allegations, none of which were substantiated.
 - § 87(2)(g)
- PO Sweat has been a member of the NYPD for three years and this is the first complaint to which she has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) chose to have his complaint investigated.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of February 20, 2020, the NYC Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (BR20).

Squad No.: _____ 6 _____

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date